

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE ENROLLED ACT No. 1367

AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 35-42-4-5, AS AMENDED BY P.L.118-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) A person eighteen (18) years of age or older who knowingly or intentionally directs, aids, induces, or causes a child under the age of sixteen (16) to touch or fondle himself or another child under the age of sixteen (16) with intent to arouse or satisfy the sexual desires of a child or the older person commits vicarious sexual gratification, a Class D felony. However, the offense is:

(1) a Class C felony if a child involved in the offense is under the age of fourteen (14);

(2) a Class B felony if:

(A) the offense is committed by using or threatening the use of deadly force or while armed with a deadly weapon; or

(B) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge; and

(3) a Class A felony if it results in serious bodily injury.

(b) A person eighteen (18) years of age or older who knowingly or intentionally directs, aids, induces, or causes a child under the age of

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sixteen (16) to:

- (1) engage in sexual intercourse with another child under sixteen (16) years of age;
- (2) engage in sexual conduct with an animal other than a human being; or
- (3) engage in deviate sexual conduct with another person;

with intent to arouse or satisfy the sexual desires of a child or the older person commits vicarious sexual gratification, a Class C felony. However, the offense is a Class B felony if any child involved in the offense is less than fourteen (14) years of age, and it is a Class A felony if the offense is committed by using or threatening the use of deadly force, if it is committed while armed with a deadly weapon, if it results in serious bodily injury, or if the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(c) A person eighteen (18) years of age or older who knowingly or intentionally:

- (1) engages in sexual intercourse;**
- (2) engages in deviate sexual conduct; or**
- (3) touches or fondles himself; the person's own body;**

in the presence of a child less than fourteen (14) years of age with the intent to arouse or satisfy the sexual desires of the child or the older person commits ~~fondling~~ **performing sexual conduct** in the presence of a minor, a Class D felony.

SECTION 2. IC 35-45-4-1, AS AMENDED BY P.L.121-2000, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) A person who knowingly or intentionally, in a public place:

- (1) engages in sexual intercourse;
- (2) engages in deviate sexual conduct;
- (3) appears in a state of nudity **with the intent to arouse the sexual desires of the person or another person; or**
- (4) fondles the person's genitals or the genitals of another person; commits public indecency, a Class A misdemeanor.

(b) A person at least eighteen (18) years of age who knowingly or intentionally, in a public place, appears in a state of nudity with the intent to be seen by a child less than sixteen (16) years of age commits public indecency, a Class A misdemeanor.

(c) However, the offense under subsection (a) or subsection (b) is a Class D felony if the person who commits the offense has a prior

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unrelated conviction:

- (1) by appearing in the state of nudity with the intent to arouse the sexual desires of the person or another person in or on a public place where a child less than sixteen (16) years of age is present;
 - (2) in a public park and has a prior unrelated conviction that was entered after June 30, 2000, for an offense under this section;
 - (3) in or on school property and has a prior unrelated conviction that was entered after June 30, 2000, for an offense under this section; or
 - (4) in department of natural resources owned or managed property and has a prior unrelated conviction that was entered after June 30, 2000, for an offense under this section:
- (1) under subsection (a) or (b); or
 - (2) in another jurisdiction, including a military court, that is substantially equivalent to an offense described in subsection (a) or (b).

(c) (d) As used in this section, "nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of covered male genitals in a discernibly turgid state.

(d) (e) A person who, in a place other than a public place, with the intent to be seen by persons other than invitees and occupants of that place:

- (1) engages in sexual intercourse;
 - (2) engages in deviate sexual conduct; or
 - (3) fondles the person's genitals or the genitals of another person;
- or**
- (4) **appears in a state of nudity;**

where the person can be seen by persons other than invitees and occupants of that place commits indecent exposure, a Class C misdemeanor.

SECTION 3. IC 35-45-4-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 1.5. (a) As used in this section, "nudity" has the meaning set forth in section 1(d) of this chapter.**

(b) A person who knowingly or intentionally appears in a public place in a state of nudity commits public nudity, a Class C misdemeanor.

(c) A person who knowingly or intentionally appears in a public place in a state of nudity with the intent to be seen by another person commits a Class B misdemeanor. However, the offense is a

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Class D felony if the person has a prior unrelated conviction under this subsection or under subsection (d).

(d) A person who knowingly or intentionally appears in a state of nudity:

(1) in or on school grounds;

(2) in a public park; or

(3) with the intent to arouse the sexual desires of the person or another person, in a department of natural resources owned or managed property;

commits a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior unrelated conviction under this subsection or under subsection (c).

SECTION 4. [EFFECTIVE JULY 1, 2003] IC 35-45-4-1 and IC 35-42-4-5, both as amended by this act, and IC 35-45-4-1.5, as added by this act, apply only to acts committed after June 30, 2003.

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Approved: _____

Governor of the State of Indiana

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